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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6
7

8 *Ex parte* WILLIAM STUART GATLEY JR., REX ALLEN
9 ROTHGANGEL, JOAN TERESA RICHTER
10 and MICHAEL LYNN KENNEDY
11

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13 Appeal 2009-1048
14 Application 10/734,775
15 Technology Center 3700
16

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18 Decided:¹ May 12, 2009
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21 Before WILLIAM F. PATE, III, JENNIFER D. BAHR, and
22 FRED A. SILVERBERG, *Administrative Patent Judges*.

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24 SILVERBERG, *Administrative Patent Judge*.
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26

27
DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from a rejection of claims 1-15. Claims 16-20 have been allowed. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

The Appellants' claimed invention is directed to a heater blower housing that draws hot exhaust gases out of and is attachable to a separate heater (Spec.1:3-9). Claim 1², reproduced below, is representative of the subject matter on appeal.

1. A heater blower housing that is attachable to a separate heater, the heater blower housing comprising:
 - a fan compartment in the heater blower housing;
 - a fan in the fan compartment;
 - a motor operatively connected to the fan for rotation of the fan in the fan compartment by the motor;
 - an exhaust compartment in the heater blower housing, the exhaust compartment having an exhaust compartment opening that receives exhaust gases from a separate heater when the heater blower housing is attached to the separate heater, the exhaust compartment communicating with the fan compartment and being positioned to receive exhaust gases from a separate heater and to direct the exhaust gases to the fan compartment, and at least a portion of the exhaust compartment having a layered wall with at least an interior layer inside the exhaust

² In any further prosecution on the application, Appellants should replace the word "heart" in claim 1, line 9 with - - heater - -, as " heater blower housing" has antecedent basis in claim 1, line 1 (Br. 10).

1 compartment and an exterior layer defining an exterior surface
2 of the blower housing, the interior layer and the exterior layer
3 being separate layers of the layered wall.
4

5 THE REJECTION

6 The Examiner relies upon the following as evidence of
7 unpatentability:

8 Morgan US 6,474,981 B1 Nov. 5, 2002
9

10 The following rejection by the Examiner is before us for review:
11 Claims 1-15 are rejected under 35 U.S.C. § 102(b) as being
12 anticipated by Morgan.
13

14 ISSUE

15 The issue before us is whether the Appellants have shown that the
16 Examiner erred in rejecting claims 1-15 over Morgan. These issue turns on
17 whether: (1) The Examiner's claim construction of the intended use
18 limitations in the claims is reasonable; and (2) Morgan explicitly or
19 inherently discloses every limitation called for in claims 1-15.
20

21 FINDINGS OF FACT

22 We find that the following enumerated findings are supported by at
23 least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d
24 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for
25 proceedings before the Office).

- 26 1. Morgan discloses a furnace blower comprising a blower housing
27 34, a motor 36, a fan 38, a combustion tube 42, the housing having

a first end 44 and a second end 46, an inlet end 56 at the first end of the housing 44, the housing 34 having an exterior surface 48 and an interior surface 52, a circular housing end wall 58 being secured to the second end 46 of the housing 34, the combustion tube having an input end 92 and an output end 94, wherein the motor has a shell 66 including a plurality of fins 68 defining a radial spacing 104 between the motor shell 66 and the interior surface 52 (col. 4, ll. 15-17).

2. Morgan further discloses that the radial spacing 104 provides a flow path of air into the housing from the inlet end 56 that passes over and cools the motor (col. 4, ll. 17-20 and fig. 3).
3. Morgan still further discloses a hollow interior volume 54 defined by the interior surface 52, the combustion tube 42 and the end wall 58 (col. 2, ll. 60-63 and fig. 3).
4. Morgan still further discloses that the combustion tube 42 has a generally conical configuration with an input end 92 and an output end 94 (col. 3, ll. 48-52 and fig. 3), wherein the combustion tube 42 tapers through a curve as it extends from the input end 92 to the output end 94 (col. 3, ll. 58-61).
5. In Morgan, the combustion tube 42 is comprised of three identifiable regions: a generally conical portion, a fan containing portion and a generally tubular throat. An exhaust compartment extends from an exhaust compartment opening (inlet end 56) through the input end 92 of combustion tube 42 to a portion of the combustion tube 42 (substantially all of the generally conical portion of the combustion tube 42) just to the left of the fan 38 in

figure 3 where the exhaust compartment communicates with a fan compartment (fan containing portion) (fig. 3).

6. In Morgan, the fan compartment (fan containing portion) is located next to the exhaust compartment and has a generally cylindrical shape extending from the exhaust compartment through the juncture between the generally conical portion and the generally cylindrical portion of the combustion tube 42. The fan compartment extends from a fan compartment opening (the end of the exhaust compartment in combustion tube 42, that is, just to the left of the fan in figure 3) to the portion of the combustion tube 42 just to the right of the fan in figure 3.

7. In Morgan, the exhaust compartment includes a layered wall, wherein the layered wall includes an interior layer or heat shield (the portion of the wall of the combustion tube 42 extending from the input end 92 to the fan compartment opening), and an exterior layer (the wall 34 of the blower housing extending to the right from the juncture of 92 and 34 to a portion of 34 just to the left of the fan 38 in fig. 3).

8. The ordinary meaning of the word “adjacent” includes “close to, lying near.” *The American Heritage® Dictionary of the English Language* (4th ed. 2000).

9. The ordinary meaning of the word “cross section” includes “a section formed by a plane cutting through an object, usually at right angles to an axis.” *The American Heritage® Dictionary of the English Language* (4th ed. 2000).

10. The ordinary meaning of the word “concave” includes “curved like the inner surface of a sphere.” *The American Heritage® Dictionary of the English Language* (4th ed. 2000).

PRINCIPLES OF LAW

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984).

“It is well settled that the recitation of a new intended use for an old product does not make a claim to that old product patentable.” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997) (citations omitted). Further, “[i]f ... the body of the claim fully and intrinsically sets forth the complete invention, including all of its limitations, and the preamble offers no distinct definition of any of the claimed invention's limitations, but rather merely states, for example, the purpose or intended use of the invention, then the preamble is of no significance to claim construction because it cannot be said to constitute or explain a claim limitation.” *Pitney Bowes, Inc. v.*

Hewlett-Packard Co., 182 F.3d 1298, 1305 (Fed. Cir. 1999) (citations omitted).

Whether a preamble of intended purpose constitutes a limitation to the claims is, as has long been established, a matter to be determined on the facts of each case in view of the claimed invention as a whole. *In re Stencel*, 828 F.2d 751, 754 (Fed. Cir. 1987).

When construing claim terminology in the United States Patent and Trademark Office, claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

ANALYSIS

Appellants contend that Morgan's blower is not designed to be attachable to a separate heater and does not have an exhaust compartment opening that receives exhaust gases when the blower is attached to a heater (Br. 5). Appellants contend that the heater blower housing of the claimed invention draws hot exhaust gasses out of a heater and delivers the exhaust gases to an exhaust flue (Br. 4), while Morgan's blower supplies ambient air to a combustion chamber of a furnace (Br. 5). Further, Appellants contend that Morgan does not show any portion of the blower as being attachable to a separate heater (cls. 2, 9 and 10) (Reply Br. 2). We agree with the Examiner's analysis (Ans. 6-8) that things which may be done are not required to be done, that is, *inter alia*, the housing is claimed as being attachable to a separate heater (cl. 1, l. 1 and cl. 8, l. 1) but not required

1 structurally to be attached to the heater. *See In re Collier*, 397 F.2d 1003,
2 1006 (CCPA 1968). This claim language is an intended use statement. The
3 claims are replete with intended use statements, e.g., the words “positioned
4 to receive exhaust gases from a separate heater” (cl. 1, ll. 10-11 (Br. 10));
5 and “from a separate heater” (cl.2, ll. 3-4 (Br. 10)). Whether a preamble of
6 intended purpose constitutes a limitation to the claims is, as has long been
7 established, a matter to be determined on the facts of each case in view of
8 the claimed invention as a whole. *In re Stencel* at 754. In this instance, the
9 body of the claims sets forth the complete invention, including all of its
10 limitations. While the heater is called for in the preamble of claims 1 and 8,
11 the heater is never specifically called for in the body of claims 1 and 8 or
12 claims 2-7 and 9-15 which depend therefrom. Therefore, the heater is not
13 positively called for in the claims. Accordingly, the intended use statements
14 regarding the heater cannot be regarded as a structural limitation and cannot
15 be relied on to distinguish the claims from the prior art. *In re Collier* at
16 1006. For the reasons set forth in the discussion below, we agree with the
17 Examiner’s analysis (Ans. 6-8) and find that while the claimed invention and
18 Morgan’s furnace blower operate in a different manner, Morgan discloses all
19 of the positively claimed limitations.

20 Regarding claims 1 and 8: Appellants contend that Morgan’s
21 combustion tube 42 is being interpreted as being two separate elements, that
22 is, as being both the fan compartment and the interior layer or heat shield
23 (Br. 6-8). Morgan discloses a furnace blower comprising a blower housing
24 34, a motor 36, a fan 38, a combustion tube 42, the housing having a first
25 end 44 and a second end 46, an inlet end 56 at the first end of the housing
26 44, the housing 34 having an exterior surface 48 and an interior surface 52, a

1 circular housing end wall 58 is secured to the second end 46 of the housing
2 34, the combustion tube having an input end 92 and an output end 94,
3 wherein the motor has a shell 66 including a plurality of fins 68 defining a
4 radial spacing 104 between the motor shell 66 and the interior surface 52
5 (col. 4, ll. 15-17) (Fact 1). In Morgan, the combustion tube 42 is comprised
6 of three identifiable regions: a generally conical portion, a fan containing
7 portion and a generally tubular throat. An exhaust compartment extends
8 from an exhaust compartment opening (inlet end 56) through the input end
9 92 of combustion tube 42 to a portion of the combustion tube 42
10 (substantially all of the generally conical portion of the combustion tube 42)
11 just to the left of the fan 38 in figure 3 where the exhaust compartment
12 communicates with a fan compartment (fan containing portion) (fig. 3) (Fact
13 5). In Morgan, the fan compartment (fan containing portion) is located next
14 to the exhaust compartment and has a generally cylindrical shape extending
15 from the exhaust compartment through the juncture between the generally
16 conical portion and the generally cylindrical portion of the combustion tube
17 42 (Fact 6). In Morgan, the exhaust compartment includes a layered wall,
18 wherein the layered wall includes an interior layer or heat shield (the portion
19 of the wall of the combustion tube 42 extending from the input end 92 to the
20 fan compartment opening), and an exterior layer (the wall 34 of the blower
21 housing extending to the right from the juncture of 92 and 34 to a portion of
22 34 just to the left of the fan 38 in fig. 3) (Fact 7). Therefore, we agree with
23 the Examiner's analysis (Ans. 3-7) and find that different, readily
24 identifiable parts, not the same part as Appellants' have contended, of
25 Morgan's combustion tube 42 correspond to the interior layer or heat shield
26 inside the exhaust compartment (which includes substantially all of the

1 generally conical portion of the combustion tube 42) and the fan
2 compartment (which extends from the exhaust compartment through the
3 juncture between the generally conical portion and the generally cylindrical
4 portion of the combustion tube 42) as called for in claims 1 and 8.

5 Regarding claims 2, 9 and 10: Appellants contend that in Morgan,
6 tube 42 that is interpreted as the claimed interior layer is not positioned on
7 an opposite side of an exhaust compartment from an exhaust compartment
8 opening that receives exhaust gasses (Br. 6, 8 and 9). In Morgan, the
9 exhaust compartment extends from an exhaust compartment opening (inlet
10 end 56) through the input end 92 of combustion tube 42 to a portion of the
11 combustion tube 42 (substantially all of the generally conical portion of the
12 combustion tube 42) just to the left of the fan 38 in figure 3 where the
13 exhaust compartment communicates with a fan compartment (fig. 3). We
14 find that Morgan's interior layer or heat shield (the portion of the wall of the
15 combustion tube 42 extending from the input end 92 to the fan compartment
16 opening) (Fact 7) is located on the opposite side of the exhaust compartment
17 from the exhaust compartment opening (inlet end 56) (left side of fig. 3)
18 (Fact 5). Therefore, we agree with the Examiner's analysis (Ans. 7) and
19 conclude that Morgan discloses the relative positioning of the interior layer
20 or heat shield to the exhaust compartment opening as called for in claims 2,
21 9 and 10.

22 Regarding claims 5 and 13: Appellants contend that Morgan does not
23 show the interior layer or heat shield extending from adjacent the exhaust
24 compartment opening to adjacent the fan compartment opening (Br. 7 and
25 9). We agree with the Examiner's analysis (Ans. 8) and find that in Morgan,
26 the interior layer or heat shield extends from the input end 92 of the

combustion tube 42 to the fan compartment opening (Facts 6-7). The ordinary meaning of the word “adjacent” includes “close to, lying near” (Fact 8). *The American Heritage® Dictionary of the English Language* (4th ed. 2000). In order for a first element to be considered to be adjacent a second element, the first element must be close to or near the second element. Appellants’ lowermost portion of the interior layer or heat shield 156 is shown in figure 18 as spaced from the exhaust compartment opening 96’ (Br. 2). Appellants’ lowermost portion of the interior layer or heat shield 156 has also been called for in claims 5 and 13 as being adjacent to the exhaust compartment opening 96’. We find that Morgan’s interior layer or heat shield extends from a first end (the portion of the wall of the combustion tube 42 at the input end 92) to a second end at the fan compartment opening (Facts 6-7). We find that Morgan’s interior layer or heat shield first end is spaced from, and close to or near the exhaust compartment opening 56 (Fact 5). We find that Morgan’s interior layer or heat shield first end is located adjacent to the exhaust compartment opening 56 (Fact 5) as is Appellants’ interior layer or heat shield 156. We conclude that Morgan discloses the interior layer or heat shield extending from adjacent the exhaust compartment opening to adjacent the fan compartment opening as called for in claims 5 and 13.

Regarding claims 6, 7, 14 and 15: Appellants contend that Morgan’s interior wall on element 42 has a circular cross section and not a concave cross section (Reply Br. 3). We find that claims 6 and 14 call for the interior layer (cl. 6) or heat shield (cl. 14), respectively, as having a curved wall. We find that claims 7 and 15 call for the curved interior layer (cl. 7) and the curved heat shield (cl. 15), respectively, as having a circular cross section.

1 Morgan discloses that the combustion tube 42 has a generally conical
2 configuration with an input end 92 and an output end 94 (col. 3, ll. 48-52
3 and fig. 3), wherein the combustion tube 42 tapers through a curve as it
4 extends from the input end 92 to the output end 94 (col. 3, ll. 58-61) (Fact
5 4). Therefore, we agree with the Examiner's analysis (Ans. 8) and conclude
6 that Morgan discloses an interior layer and a heat shield having a curved
7 wall as called for in claims 6 and 14. The ordinary meaning of the word
8 "cross section" includes "a section formed by a plane cutting through an
9 object, usually at right angles to an axis" (Fact 9). The ordinary meaning of
10 the word "concave" includes "curved like the inner surface of a sphere"
11 (Fact 10). *The American Heritage® Dictionary of the English Language*
12 (4th ed. 2000). Therefore, we find that when a section is formed by a plane
13 cutting through Morgan's combustion tube 42 that tapers through a curve
14 (Fact 4), the cross section will have a concave configuration. Accordingly,
15 we agree with the Examiner's analysis (Ans. 8) and conclude that Morgan
16 discloses a curved interior layer and a curved heat shield having a circular
17 cross section as called for in claims 7 and 15.

18 For the reasons set forth above, we conclude that the Examiner did not
19 err in rejecting claims 1-15 over Morgan. We affirm the rejection of claims
20 1-15 under 35 U.S.C. § 102 thereof.

21
22 CONCLUSION OF LAW

23 We conclude that the Appellants have not shown that the Examiner
24 erred in rejecting claims 1-15 under 35 U.S.C. § 102(b) as being anticipated
25 by Morgan.
26

DECISION

The decision of the Examiner to reject claims 1-15 over Morgan is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

JRG

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